

[Moon v. Philadelphia Electric Co.](#), 90-ERA-48 (Dep. Sec'y Jan. 31, 1991)

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U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

DATE: January 31, 1991
CASE NO. 90-ERA-48

IN THE MATTER OF

JOSEPH W. MOON,
COMPLAINANT,

v.

PHILADELPHIA ELECTRIC COMPANY,
R.W. DUBIEL, G.W. MURPHY,
AND M.A. CHRISTINZIANO,
RESPONDENTS.

BEFORE: THE ACTING SECRETARY OF LABOR¹

FINAL ORDER OF DISMISSAL

On September 18, 1990, Administrative Law Judge (ALJ) Ralph A. Romano issued a Recommended Decision for Approval of Settlement Agreement and Dismissal of Action in this case which arises under the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The ALJ reviewed the Separation Agreement and Release and the Stipulation of Dismissal and found them to be fair, adequate and reasonable, and that dismissal of

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the action is not against the public interest. *See generally, Fuchko v. Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, March 23, 1989, slip op. at 1-2. The ALJ accordingly recommended that the settlement be approved and the case be dismissed with prejudice.²

Review of the agreement reveals that it appears to encompass the settlement of matters under various laws, only one of which is the ERA. *See, e.g.*, Separation Agreement ¶¶ 7, 9. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, November 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York Inc.*, Case No. (86-)CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Decision and Order on Remand, issued November 3, 1986.

I have, therefore, limited my review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondents violated the ERA.

Upon review of the terms of the agreement signed by the parties, I find that it is fair, adequate and reasonable.³ I, therefore, accept the ALJ's recommendation that the settlement be approved and the case be, and it hereby is, DISMISSED with prejudice. *See Stipulation of Dismissal.*

SO ORDERED.

Acting Secretary of Labor

Washington, D.C.

[ENDNOTES]

¹There is presently a vacancy in the Office of Secretary of Labor. The Deputy Secretary is authorized to "perform the duties of the Secretary until a successor is appointed. . . ." 29 U.S.C. § 552 (1988).

²On review, the parties also have submitted the Amendment to Separation Agreement and Release (the Amendment), signed by the parties, and containing all terms not expressly contained in the Separation Agreement and Release, but agreed to by the parties as part of the settlement of this matter. *See, e.g., Nolder v. Raymond Kaiser Engineers, Inc.*, Case No. 84-ERA-5, Sec. Order, August 2, 1989. My review of the settlement accordingly includes both the documents before the ALJ as well as the Amendment, all of which comprise the complete agreement between the parties.

³I note, however, that the last sentence of Para. 2 of the Separation Agreement is evidently unenforceable to the extent that it attempts to impose obligations upon a non-signatory to the agreement. *See, e.g., Chicago College of Osteopathic Medicine v. George A. Fuller Co.*, 719 F. 2d 1335, 1344-1345 (7th Cir. 1983) (non-party to a contract is not bound by it); *Puerto Rico Marine Mgmt., Inc. v. Ken Pen Amusement, Inc.*, 574 F. Supp.

563, 566 (W.D. Pa. 1983) (contract cannot impose obligations upon one who is not a party to it).